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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Accountancy
Virginia Administrative Code (VAC) citation	Amending subsection B of 18 VAC 5-21-30
Regulation title	Board of Accountancy regulations
Action title	Reducing the amount of education that must be obtained prior to taking the CPA examination
Date this document prepared	December 22, 2008

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) reads “[r]egulations that an agency finds are necessitated by an emergency situation may be adopted by an agency upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor. Or an emergency situation is a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

Although the CPA examination is a uniform, national examination, it is administered through the individual states for a fee set by the state. Each state has requirements for how much education is required for licensure and how much of that education must be obtained prior to taking the CPA examination through the state. The education required for licensure in Virginia is the same as the education required for licensure in substantially all other states. However, Virginia's requirement that all of the education required for licensure must be obtained prior to taking the CPA examination through Virginia is more restrictive than the requirement of most of the other states. The relatively recent computerization of the CPA examination has made taking the examination through another state easier.

The Virginia Board of Accountancy (Board) wishes to promulgate an emergency regulation as well as publish a NOIRA to begin the process of promulgating a permanent replacement regulation that will reduce how much of the education required for licensure must be obtained prior to taking the CPA examination through Virginia so that the requirement is no more restrictive than the requirement of most of the other states. The Board believes that the reduction will not harm the public interest and that the change is necessitated by an emergency situation for three reasons:

- a. Continuing a requirement that causes a person to take the additional steps needed to take the CPA examination through another state creates an impediment to doing business in Virginia. The Commonwealth has a long-standing commitment to eliminate impediments to doing business in Virginia.
- b. Without this change, as knowledge of the ability to take the CPA examination through another state becomes more widespread, applications to take the CPA examination through Virginia will decrease significantly. The resulting significant reduction in the Board's revenues will occur relatively quickly.
- c. The General Assembly in the 2007 Acts of Assembly Chapter 804 gave the Board emergency authority to promulgate this new regulation within 280 days of July 1, 2007.

The emergency regulation also defines "accounting concentration or equivalent," which is a requirement for licensure and for taking the CPA examination through Virginia.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

1. The Board has the legal authority to promulgate the contemplated amendments to its regulations through Chapter 44 of Title 54.1 of the *Code of Virginia*, 1950, as amended. *See also*, Executive Order 36 (2006).

2. The Board has the legal authority in §§ 54.1-4403 (1), (2), and (3) of the *Code of Virginia* to promulgate the regulation. The Board received a memorandum dated December 11, 2008, from the Office of the Attorney General stating that the Board has the authority to promulgate this emergency regulation.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

1. The *Code of Virginia* establishes the Board as the state agency that oversees licensing of CPAs providing services in Virginia. The Board's sole mission is to protect the public, and it views licensing as a broad concept that offers the public significant protection by prescribing requirements for formal and continuing professional education, examination, and experience and by prescribing standards of conduct and practice.
2. The licensing requirements are found in the accountancy statutes located in Chapter 44 of Title 54.1 of the *Code of Virginia* (statutes) and in the related Board regulations (regulations). In October 2004, the Board began a comprehensive reconsideration of the statutes and the regulations. The Board carefully considered how the accounting profession and the needs of the public have changed since most of the statutes were established and whether the statutes and regulations were still properly responsive in protecting the public. The Board also considered whether the statutes and regulations were understandable by licensees and the public. The Board decided that the public would be better served if the statutes and the regulations were substantially revised so that the statutes provide the framework for all the requirements for CPAs and the regulations only provide requirements relating to statutes that do not stand on their own.
3. The Board spent nearly two years developing a proposal for the General Assembly to consider. Under the proposal, there would be a comprehensive revision of the statutes, with the overriding objective of putting into place requirements that would be comprehensive, evergreen, and relatively simple to understand. During the 2007 General Assembly session, the proposed revisions to the statutes were approved unanimously by both the Senate and the House of Delegates. They were signed into law by Governor Kaine in March 2007 and became effective July 1, 2007. The General Assembly gave the Board emergency authority to promulgate regulations to implement the revisions within 280 days of their enactment.
4. The comprehensive 2007 revisions to the statutes have had two pervasive effects on the current regulations: some new regulations are needed, and most of the current regulations are no longer needed. The Board is therefore proposing new regulations that would replace all of the current regulations. This Form TH-05 only addresses the new regulation that is in response to an emergency situation. The proposed emergency regulation would replace a subsection of the current regulations. All of the new regulations, including the emergency regulation in this Form TH-05, are addressed in a Form TH-02 that is being submitted into the regulatory process at the same time this Form TH-05 is being submitted. Repeating the emergency regulation is necessary

because the Form TH-02 proposes to delete Chapter 21 of 18 VAC 5, which has the current regulations, and to establish a new Chapter 22 of 18 VAC 5 that will have all of the new regulations.

5. In December 2007, the Board filed a NOIRA announcing that the Board planned to study its fee structure and as a result would likely increase its fees. The Board has not finished the study. However, based on its preliminary findings, the Board believes that in the early part of 2009 it will file a Form TH-02 proposing fee increases. That Form TH-02 would be designed to update the fee amounts in the regulations being proposed in the Form TH-02 that is being submitted into the regulatory process at the same time this Form TH-05 is being submitted. The proposed regulations in the two Forms TH-02 will completely replace the current regulations. The Board does not anticipate proposing additional changes.

6. Subdivision A1 of § 54.1-4409.2 of the *Code of Virginia* prescribes the requirements for how a person who has not held the license of any state may obtain a Virginia license, including the education that must be obtained and the requirement to take the CPA examination. Subsection A1a of § 54.1-4409.2 of the *Code of Virginia* prescribes the education that must be obtained, requiring that the person obtain from one or more accredited institutions or from the National College at least 150 semester hours of education, a baccalaureate or higher degree, and an accounting concentration or equivalent. The statutes do not address how much of the education required for licensure must be obtained prior to taking the CPA examination, but subdivision B2 of 18 VAC 5-21-30 of the current regulations requires that *all* of the education requirements for licensure be met *before* the person submits to the Board an application to take the CPA examination.

7. As part of its comprehensive reconsideration of the regulations, the Board had decided to continue requiring that all the education required for licensure must be obtained prior to taking the CPA examination. However, the Board subsequently became aware of information that caused it to reconsider that decision.

8. The board of accountancy of each state is a member of the National Association of State Boards of Accountancy (NASBA), which was designed as a coordinating body for the state boards. Through representation at a June 2008 regional meeting of NASBA, the Board became aware that the trend among other states is moving toward requiring less than 150 semester hours of education to take the CPA examination. Based on information available through NASBA in the November 2008 draft of a discussion paper entitled *Education and Licensure Requirements for Certified Public Accountants: A Discussion Regarding Degreed Candidates Sitting for the Uniform CPA Examination with a Minimum of 120 Credit Hours (120-Hour Candidate) and Becoming Eligible for Licensure with a Minimum of 150 Credit Hours*:

- a. The boards of accountancy of 48 states require 150 semester hours of education for licensure, but 28 of those boards permit taking the CPA examination before all of the education required for licensure has been obtained.
- b. When a majority of the states were changing legislation to require 150 semester hours of education to take the CPA examination and be licensed, a few states amended their rules

to include the additional education for licensure but never passed legislation that required 150 semester hours of education to take the CPA examination. The most recent development is to change the legislation that requires 150 semester hours of education to take the CPA examination back to 120 hours but still require 150 semester hours of education for licensure.

9. The CPA examination is a uniform, national examination that is designed, delivered, and monitored under rigorous conditions and consists of four parts. Prior to July 1, 2006, the CPA examination was given manually twice a year, and persons could take one or more parts of the examination only at those times. Effective July 1, 2006, the CPA examination was computerized, and persons can now take one part at a time at any of the authorized testing centers during the first two months of each quarter. All the jurisdictions included in the definition of “state” in § 54.1-4400 of the *Code of Virginia* have at least one authorized testing center.

10. The board of accountancy of each state charges an administration fee for a person to take the CPA examination through that state. Some boards of accountancy only charge a fee for the first time a person takes the CPA examination, but others charge an additional fee for retaking parts of the CPA examination.

11. For some time, a person has been able to take the CPA examination through a state other than the one in which he wanted to ultimately be licensed. Computerization of the examination has made that easier to do. For example, a person located in Virginia who has only obtained 120 of the 150 semester hours required for licensure—

- a. Can go to the website of the board of accountancy of a state that only requires 120 semester hours to take the CPA examination and apply for permission to take the examination through that state.
- b. Once permission is obtained from that state, the person can go to any authorized testing center *in Virginia* and take the examination.
- c. Once the person passes the examination and meets the remaining requirements for licensure, he can apply for a Virginia license noting that he took the CPA examination through another state.

12. The Board discussed a threshold question—would it be willing to refuse granting that person a Virginia license solely because he *passed* the CPA examination through a state that required fewer semester hours to *take* the examination? The Board noted that, at the time of application for a Virginia license, the person would have obtained all the education required for licensure and would have passed the CPA examination. The Board therefore concluded that it would not be willing to refuse granting a person a Virginia license solely because he passed the CPA examination through a state that required fewer semester hours to take the examination. Refusing to grant a Virginia license would not further protect the public since the person has obtained the required education and passed the CPA examination.

13. The Board believes the public would not be harmed by changing the regulations so that only 120 of the 150 semester hours of education required for licensure must be obtained prior to taking the CPA examination. As an observation, the November 2008 draft of the NASBA paper discussed in paragraph 8 of this section of the Form TH-05 reached the same conclusion, saying, “We have found no direct evidence of detriment to the public interest in those states allowing candidates to sit for the CPA examination at less than 150 hours of education and later fulfilling the 150 hours for licensure.”

14. The Board therefore wishes to replace subsection B of 18 VAC 5-21-30 of the current regulations with a new subsection B entitled *Education* that would reduce how much of the education required for licensure must be obtained prior to taking the CPA examination through Virginia and define “accounting concentration or equivalent,” which is a component of the education required for licensure and for taking the CPA examination through Virginia. This new subsection B would have all the education requirements for taking the CPA examination through Virginia.

15. Based on discussions with educators, many accounting majors want to pass the CPA examination as soon as possible after they obtain their baccalaureate degree because they believe that will improve their marketability to potential employers and enable them to start their careers sooner. While the ability to take the CPA examination through another state sooner has not yet significantly reduced the number of first-time applications to take the examination through Virginia, that is probably because this ability is not widely known. The Board believes it is likely that the ability to take the CPA examination through another state will soon become more widely known and that if the Board does not change its requirements, more and more persons who ultimately want to apply for a Virginia license will take the CPA examination through a state that lets them take it sooner.

16. The Board currently charges \$120 for the first time a person applies to take the CPA examination but does not charge a fee for retaking parts of the examination. During the year ended June 30, 2008, the Board processed 1,823 first-time applications, which generated revenue of approximately \$219,000. During the three months ended September 30, 2008, the Board processed 453 first-time applications, which generated revenue of approximately \$54,000.

17. There are four key factors underlying an estimate of the effect of a reduction in the number of first-time applications if the new regulation is not enacted immediately: the fee for each application, the reduction in the number of applications, the timing of the reduction, and cost savings from reductions in staffing and other costs required because there will be fewer applications to process. Assumptions for three of those factors—the number and timing of reductions and cost savings—cannot be developed with a reasonable degree of precision. However, if applications decrease by 50%, annual revenues would be reduced approximately \$110,000. While some cost reduction measures could be implemented because of the reduction in the number of applications processed, the Board believes the cost savings would not be material at that level.

18. While the Board could propose corresponding increases in other fees, because of the length of the regulatory process required to implement fee increases, new fees would not likely become

effective for at least two years. However, the Board does not believe those increases would be reasonable since they are the result of a position that does not enhance public protection.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to Virginia's citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The new regulation is needed to avoid a significant reduction in the Board's revenues and to remove an impediment to doing business in Virginia. The Board believes the change would not harm the public and would help persons start their accounting careers sooner.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
<p>Subsection B of 18 VAC 5-21-30 would be replaced with a new subsection B entitled <i>Education</i></p>		<p>B. Education prior to taking the CPA exam:</p> <p style="padding-left: 20px;">1. Each candidate whose application to sit for a CPA exam administered prior to July 1, 2006, shall have received a baccalaureate degree or its equivalent conferred by an accredited college or university as required by § 54.1-4409 B 1 of the Code of Virginia and shall at the time the application is received have completed the following courses at the undergraduate or graduate level to meet the accounting concentration requirement of § 54.1-4409 B 1 of the Code of Virginia:</p>	

		<p>a. At least 24 semester hours of accounting including courses covering the subjects of financial accounting, auditing, taxation, and management accounting; and</p> <p>b. At least 18 semester hours in business courses (other than the courses described in subdivision 1a of this subsection).</p> <p>A candidate whose application is received under the requirements of this subdivision may take the CPA exam so long as the requirements of subsection C of this section are met.</p> <p>2. Each candidate whose application to sit for a CPA examination administered on or after July 1, 2006, shall meet the requirements of § 54.1-4409 B 2 of the Code of Virginia and shall at the time the application is received have completed the following courses at the undergraduate or graduate level to meet the accounting concentration requirement of § 54.1-4409 B 2 of the Code of Virginia:</p> <p>a. At least 30 semester hours of accounting, including courses covering the subjects of financial accounting, auditing, taxation, and management accounting; and</p>	
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		<p>b. At least 24 semester hours in business courses (other than the courses described in subdivision 2a of this subsection).</p> <p>3. A quarter hour of coursework shall be considered the equivalent of two thirds of a semester hour of coursework.</p> <p>4. Each candidate with a degree or coursework earned at a nonaccredited college or university shall, if credit for such degree or coursework is to be considered by the board, (i) have his educational credentials evaluated by an academic credentials service approved by the board or an accredited institution, as defined in 18 VAC 5-21-10, to determine the extent to which such credentials are equivalent to the education requirements set forth in subdivisions 1 and 2 of this subsection and (ii) submit such evaluations to the board, which may accept or reject the evaluator's recommendations in whole or in part.</p> <p>5. Evidence of having obtained the required education shall be submitted in the form of official transcripts transmitted in a manner determined by the board. In unusual circumstances, the board may accept other evidence it deems to be substantially equivalent.</p>	
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Subdivision B2 of 18 VAC 5-21-30 of the current regulations requires that the provisions of Subdivision B2 of § 54.1-4409 of the *Code of Virginia* be met prior to applying to take the CPA

examination. This statute has been replaced by a statute with the same substance for licensing—subsection A1a of § 54.1-4409.2 of the *Code of Virginia*—but the new statute does not mention the number of semester hours of education required to take the CPA examination. Both the superseded statute and the new statute generally require the same education for licensure—obtaining from one or more accredited institutions or the National College at least 150 semester hours of education, a baccalaureate or higher degree, and an accounting concentration or equivalent.

Proposed Change and Rationale

Subsection B of 18 VAC 5-21-30 of the current regulations, which is introduced with the phrase “education prior to taking the CPA exam,” has five subdivisions.

Subdivision B1 applies only to CPA examinations administered prior to July 1, 2006, and is therefore no longer applicable.

Subdivision B2 applies to CPA examinations administered on or after July 1, 2006, and contains the related definition of “accounting concentration or equivalent.” This new regulation replaces that definition. Subsection A1a of § 54.1-4409.2 of the *Code of Virginia* generally requires that a person who has not been licensed must have an accounting concentration or equivalent from an accredited institution in order to obtain a Virginia license. The current regulations, in subdivision B2 of 18 VAC 5-21-30, define “accounting concentration.” However, the language in that regulation has led to several different interpretations in practice. The new regulation clarifies the Board’s position.

Similar to the current regulations, the new regulation considers an accounting concentration or equivalent as having two components. The first component is 24 semester hours of accounting courses, including courses in auditing, financial accounting, management accounting, and taxation, other than principles or introductory accounting courses. The counterpart in the current regulations is 30 semester hours, but the Board has been interpreting that as including six hours of principles or introductory accounting courses. The new regulation makes that requirement clear.

The second component is 24 semester hours of business courses, which is the same minimum number of hours prescribed for the second component in the current regulations. However, the current regulations do not address whether accounting courses could also be considered to be business courses for the purpose of complying with the second component. Accounting courses contribute to a person’s knowledge of business, even though that is not their main objective. A literal reading of the current regulations could lead a person to conclude that he could comply with the current requirement for an accounting concentration or equivalent by taking six semester hours of principles or introductory accounting courses and 48 semester hours of other accounting courses.

The new regulation clarifies that the Board’s intention is that a person must have education in business courses that are not designed primarily as accounting courses. To provide some flexibility in structuring course loads, the new regulation permits counting no more than six

semester hours of courses that could be considered accounting courses in determining compliance with the second component. A person could therefore comply with the two components by taking 30 semester hours of courses that would be considered accounting courses and 18 semester hours of courses that would be considered business courses but would not be considered accounting courses. The new regulation also makes it clear that principles or introductory accounting courses cannot be considered in determining whether a person has obtained the 48 minimum number of semester hours required for an accounting concentration or equivalent.

Subdivision B3 addresses how to convert quarter-hours to semester-hours. That is no longer necessary since the relationship is standardized throughout higher education.

Subdivision B4 addresses how course work from nonaccredited institutions may be considered. That is no longer applicable because subsection A1a of § 54.1-4409.2 of the *Code of Virginia* requires that all the education required for licensure be obtained from accredited institutions and the proposed new regulation requires that all the education required to take the CPA examination be obtained from accredited institutions.

Subdivision B5 requires providing evidence of completing the required coursework. That is no longer necessary because subsection A1a of § 54.1-4409.2 of the *Code of Virginia* requires providing documentation of obtaining the education required for licensure, and the Board believes the requirement to also provide documentation to take the CPA examination does not need to be in the regulations.

The Board therefore believes subsection B of 18 VAC 5-21-30 of the current regulations can be deleted and replaced with a new subsection B that reduces how much of the education required for licensure must be obtained prior to taking the CPA examination through Virginia and defines “accounting concentration or equivalent.” As discussed in paragraph 14 of the “Purpose” section of this Form TH-05, this new subsection B would have all the education requirements for taking the CPA examination through Virginia.

The proposed new subsection B follows.

B. Education

1. In order for a person to take the CPA examination through Virginia, he must have obtained from one or more accredited institutions or from the National College at least 120 semester hours of education, a baccalaureate or higher degree, and an accounting concentration or equivalent prior to taking any part of the CPA examination.
2. For the purpose of complying with subdivision B1 and with subsection A1a of § 54.1-4409.2 of the *Code of Virginia*, obtaining an accounting concentration or equivalent requires obtaining at a minimum:
 - a. 24 semester hours of accounting courses, including courses in auditing, financial

accounting, management accounting, and taxation; and

- b. 24 semester hours of business courses, no more than six semester hours of which could be considered accounting courses.

Principles or introductory accounting courses cannot be considered in determining whether a person has obtained the 48 minimum number of semester hours required for an accounting concentration or equivalent.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

The Board discussed continuing the current requirement that candidates must obtain all the education required for licensure prior to taking the CPA examination. However, the Board believes continuing that requirement will likely cause a significant reduction in its revenues and create an impediment to doing business in Virginia. In addition, the Board believes the proposed reduction in the number of hours of education required to take the CPA examination will not harm the public and will enable persons to start their careers sooner. The Board believes immediate implementation of the proposed revision will not significantly affect the costs or the revenues of the Board.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping, and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email, or fax to Michael D. Rogers, Acting Executive Director: mail—9960 Mayland Drive, Suite 402, Richmond, Virginia 23233; e-mail—boa@boa.virginia.gov; and fax—804-527-4410.

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public meeting will not be held pursuant to an authorization to proceed without holding a public meeting.

Participatory approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is not using the participatory approach in the development of the proposal pursuant to an authorization to proceed without the participatory approach.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The revised regulation may result in a favorable impact on Virginia families as children who are enrolled in college will be able to qualify earlier to take the CPA examination, which may result in a job offer occurring earlier in the career progression. Also, CPA firms may choose to assist with education expenses to complete the 150 semester hour requirement to become licensed as a Virginia CPA.

For family members who choose to change career fields or who suffer a job loss, they may show a greater interest in becoming a CPA if they can begin the examination process as soon as they have completed the undergraduate degree and the core accounting and business coursework. Employers are more apt to hire an individual who is qualified to begin the examination process.